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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------|------------------|
| 10/714,941   | 11/18/2003  | Kaiyo Nakajima       | 2038-306               | 4533             |
| 22429  | 7590        | 12/30/2005           | EXAMINER               |                  |
| LOWE HAUPTMAN GILMAN AND BERNER, LLP<br>1700 DIAGONAL ROAD<br>SUITE 300 /310<br>ALEXANDRIA, VA 22314 |             |                      | STEPHENS, JACQUELINE F |                  |
|  |             |                      | ART UNIT               | PAPER NUMBER     |
|  |             |                      | 3761                   |                  |

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/714,941

Applicant(s)

NAKAJIMA ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 9 is/are rejected.
- 7) ☒ Claim(s) 3,7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/26/04, 11/18/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gustafsson et al. USPN 612485. Gustafsson discloses a disposable diaper comprising:

a top sheet (col. 2, lines 5-9) facing the wearer;

a liquid impervious back sheet 4,5 facing away from the wearer;

a liquid absorbent core 6 disposed between the top and back sheets;

front and back waist and crotch regions (Figures 1 and 2);

end flaps and side flaps (Figures 1 and 2);

openings 2 and 3, which pass through a thickness of the top sheet and core 6 in the crotch region;

wherein the backsheet 4,5 has a free portion underneath the core contractibly

attached with a plurality of elastic members as claimed see col. 2, lines 13-26

where Gustafsson discloses the holes are covered by cover layer 4, 5 forming a pocket round each hole. Gustafsson discloses the backsheet is sealed to the

elastic pant only in the area immediately surrounding the absorbent, which

creates a free portion of the material 4,5.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafsson USPN 6120485. Gustafsson discloses the present invention substantially as claimed. However, Gustafsson does not disclose the extent to which the gathers are extended of the tensile stress of the elastic members when extended. Gustafsson does disclose an elastomeric material with a backsheet having a free portion. Gustafsson discloses the pocket is filled and weighted down with waste (col. 2, lines 39-41), which further implies the free portion is extended in use. Therefore, the general conditions of the claims are disclosed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outer cover of Gustafsson with the claimed extension and tensile stress, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, *In re Aller et al.* 105 USPQ 233.

***Allowable Subject Matter***

4. Claims 3, 7, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. As to claim 3, Gustafsson does not additionally show the back sheet smaller than the top sheet creating the side portions as claimed. As to claims 7 and 8, Gustafsson does not additionally show a plurality of pleats extending in the longitudinal direction as claimed.

### ***Conclusion***


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sasaki USPN 6423042; Fujioka et al. USPN 6056732 ; Yamamoto et al. USPN 5607416 ; Vogt et al. USPN 61332409 ; Takagi USPN 4950262 ; Van Gompel et al. USPN 6264641 ; and Guidotti et al. USPN 6123692 are cited to show disposable garments with apertured cores and/or backsheets with expandable free portions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

December 02, 2005